

IN THE UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF ARKANSAS  
FORT SMITH DIVISION

DARRELL WAYNE WISE

PLAINTIFF

v.

Civil No. 05-2132

MICHAEL OGLESBY;  
LARRY CLARK; WAYNE  
THOMPSON; and BILLY RYAN

DEFENDANTS

**REPORT AND RECOMMENDATION OF THE MAGISTRATE JUDGE**

Before the undersigned for report and recommendation is the plaintiff's motion for leave to appeal in forma pauperis (IFP) (Doc. 67 & Doc. 68). On May 22, 2007, the undersigned issued a report and recommendation (Doc. 54) on the plaintiff's motion for summary judgment. The undersigned recommended that the plaintiff's motion for summary judgment be denied.

The report and recommendation was adopted by United States District Judge Robert T. Dawson on June 11, 2007 (Doc. 59). Plaintiff filed a notice of appeal on June 21, 2007 (Doc. 63). In the notice of appeal he indicates he is appealing from the order entered by United States District Judge Dawson on June 11, 2007.

Plaintiff has now filed a motion for leave to appeal IFP (Doc. 67 & Doc. 68). Pursuant to 28 U.S.C. § 1915(a)(3) "[a]n appeal may not be taken in forma pauperis if the trial court certifies in writing that it is not taken in good faith." In this case, the court merely denied the plaintiff's motion for summary judgment. The plaintiff's claims have not been dismissed and are still pending.

No final appealable judgment has been entered in this case. Accordingly, any appeal at this stage of the litigation would be frivolous and not taken in good faith. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989).

I therefore recommend that the motion for leave to appeal IFP (Doc. 67 & Doc. 68) be denied as the appeal is not taken in good faith, 28 U.S.C. § 1915(a)(3). Plaintiff may, of course, renew his motion for leave to appeal IFP with the Court of Appeals for the Eighth Circuit. Fed. R. App. P. 24(a).

**The parties have ten days from receipt of the report and recommendation in which to file written objections pursuant to 28 U.S.C. § 636(b)(1). The failure to file timely objections may result in waiver of the right to appeal questions of fact. The parties are reminded that objections must be both timely and specific to trigger de novo review by the district court.**

DATED this 17th day of July 2007.

/s/ *J. Marschewski*

HON. JAMES R. MARSCHEWSKI  
UNITED STATES MAGISTRATE JUDGE